

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-186686

DATE: September 21, 1976

MATTER OF: Cummins-Wagner Co. Inc.

## DIGEST:

Proposed cancellation of invitation is not objectionable where record indicates requirement that bidder be "local authorized manufacturer's distributor" for compressor offered overstates Government's needs and is therefore undue restriction on competition.

Invitation for bids No. 3FP-BE-R-BG2494-1 was issued by the Federal Supply Service, General Services Administration (GSA), for the procurement of two packaged rotary screw compressor units. Because the invitation also required that "The compressor must be sold and serviced by a local authorized manufacturer's distributor . . .," Cummins-Wagner Co. Inc. (Cummins-Wagner) protested against an award to any firm other than itself since it alone met this requirement, and it was thus the low, responsive bidder.

GSA agrees that of all the bidders only Cummins-Wagner meets the above-quoted requirement. However, GSA notes that this provision is now considered to be unduly restrictive of competition since the requirement overstates the Government's needs. It is reported that the requirement was inadvertently included in the invitation due to inadequate coordination between the requisitioning activity and the procurement officials. It is also stated that there is no necessity to restrict the sale and servicing of the compressors to either a "local" distributor or solely to a "distributor" as opposed to a manufacturer. GSA notes that the Government's principal interest, in addition to competent servicing, is to have a reasonable, timely reaction capability on the part of the successful bidder, which can be attained without the restriction imposed. Consequently, GSA proposes to cancel the invitation and to readvertise its needs after the deletion of the requirement in question and the insertion of a provision fully defining its needs with regard to competent servicing and timely reaction capability.

Cummins-Wagner protests any cancellation and resolicitation on the grounds that the requirement as set forth provided the Government what it needed and that it was the low bidder meeting this requirement.

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The rejection of all bids after they have been opened tends to discourage competition because it results in making all bids public without award, which is contrary to the interests of the low bidder, and because rejection of all bids means that bidders have expended manpower and money in preparation of their bids without the possibility of acceptance. GAF Corporation; Minnesota Mining and Manufacturing Company, 53 Comp. Gen. 586 (1974), 74-1 CPD 68. However, our Office ordinarily will not question the broad authority of the contracting officer to reject all bids and readvertise when a "compelling reason" to do so exists. Spickard Enterprises, Inc.; Cottrell Engineering Corporation, 54 Comp. Gen. 145 (1974), 74-2 CPD 121; 53 Comp. Gen., supra; 52 Comp. Gen. 285 (1972).

In the present case, we believe that a compelling reason for cancellation and resolicitation does exist. While 12 bids were received, all 5 bids lower than that submitted by Cummins-Wagner had to be rejected because the bidders could not meet the questioned requirement. There is no indication that adequate servicing could not be obtained from bidders other than "a local authorized manufacturer's distributor." Thus, the inclusion of such a requirement in the invitation was restrictive of competition in that firms which might be willing to sell the Government the equipment and which might be capable of providing adequate servicing, but which would not meet the above requirement, would be deterred from bidding on the invitation. Therefore, competition may have been adversely affected.

Accordingly, the protest is denied.

Acting

*R. F. K. 11*  
Comptroller General  
of the United States